

# UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

## SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: NC DEPARTMENT OF ENVIRONMENTAL QUALITY ("DEQ")

**YOU ARE COMMANDED** to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

### REQUEST FOR DOCUMENTS ONLY

Place:

Lennon Federal Building  
2 Princess Street  
Wilmington, NC 28401

Date and Time:

August 22, 2017 at 9:00 am

You must also bring with you the following documents, electronically stored information, or objects *(blank if not applicable)*:

\*\*\* SEE ATTACHMENT \*\*\*

If you wish to produce the documents in lieu of appearance, please contact the undersigned Assistant United States Attorney to make those arrangements.

Date: July 28, 2017

CLERK OF COURT

*Nick Bullock*  
Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are:

Banumathi Rangarajan  
U.S. Attorney's Office, EDNC  
310 New Bern Avenue, Suite 800  
Raleigh, North Carolina 27601  
(919) 856-4530

USAO # 2017R00462 - 2

## PROOF OF SERVICE

This subpoena for *(name of individual or organization)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I served the subpoena by delivering a copy to the named person as follows: \_\_\_\_\_

\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because: \_\_\_\_\_

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

## ATTACHMENT A

In re Grand Jury Subpoena to:

Custodian of Records

**NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL QUALITY ("DEQ")**

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

### I. INSTRUCTIONS

A. This subpoena requires that you appear before the Grand Jury at the time and place specified and produce to the Grand Jury all documents described herein.

B. Documents to be produced include all documents in your possession, custody or control, wherever located, described in Section III, below. Without limitation on the term "control" a document is deemed to be in your control if you have the right to secure that document or a copy thereof from another person.

C. All documents that respond, in whole or in part, to any part or clause or any paragraph of this subpoena shall be produced in their entirety, including all attachments to documents called for by this subpoena shall be produced, even if they are not otherwise responsive to this subpoena. Documents shall be produced in the order and in the file folders in which they appear in your files and shall not be shuffled or otherwise rearranged. Documents that in their original condition were stapled, clipped or otherwise fastened together shall be produced in such form.

D. All responsive materials shall be provided in their native format. For example, all material maintained in electronic format shall be provided in that original format, to preserve metadata, and not converted into another format (such as a .pdf, .tif, .jpeg, or other image format). For materials that are maintained in both electronic and hard copy format, provide them in both formats.

E. **Please organize the response separately for each individual facility for which information is requested.**

F. Any document demanded by the subpoena that is withheld on a claim of privilege must be preserved. If the document contains privileged material, produce the entire document with the privileged portion deleted. For any document or any portion of a document withheld under a claim of privilege, submit a sworn or certified statement from your counsel in which you identify the document by author(s), addressee(s), date, number of pages, current location, and subject matter; specify the nature and basis of the claimed privilege and specify the paragraph of this demand for documents to which the document is responsive; and identify each person to whom the document or its contents, or any part thereof, was disclosed. For purposes of this instruction, "subject matter" means the actual subject(s) of the document, regardless of the document's title or subject line.

G. No agreement by the United States Attorney's Office or any of its representatives purporting to modify, limit or otherwise vary this subpoena shall be valid or binding on the Department of Justice unless confirmed or acknowledged in writing (or made of record in court) by a duly authorized representative thereof.

## II. DEFINITIONS

A. "And" and "or" as used herein are terms of inclusion and not of exclusion, and shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this schedule any document or information that might otherwise be construed to be outside its scope.

B. "Document" means any written, recorded or graphic material of any kind or form (including electronic records) that is in your possession, custody or control. The term includes, but is not limited to: contracts; agreements; permits; letters; telegrams; interoffice communications; memoranda; notes; reports (including lab reports, bench sheets, other laboratory documents, and discharge monitoring reports); analyses; notebooks; surveys; lists; outlines; schedules; pamphlets; newsletters; flyers; charts; tabulations; compilations; studies; books; records; telephone books or messages; visitor books; calendar or diary entries; desk or appointment calendars; drafts; business cards; minutes or meetings or conferences; notes or memos or other records of telephone or other conversations or communications; electronic mail transmission; ledgers; financial statements; bills or invoices; purchase orders; receipts; photostats; microfilm; microfiche; audio and video tape or disc recordings; and computer printouts. It also includes electronically stored data from which information can be obtained either directly or by translation through detection devices or readers. Any such document is to be produced in reasonably usable form, along with instructions for reading the data. The term "document" includes the original (or a copy thereof if the original is not available) and all copies that differ in any respect from the original or that bear any notation, marking or information not on the original. This definition is applicable regardless of whether a request below specifies particular subcategories of documents.

C. "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute or other business or legal entity, and includes any affiliate, parent or subsidiary.

D. North Carolina Department of Environmental Quality, also known as DEQ, shall include all predecessor agency, including North Carolina Department of Environment and Natural Resources (NCDENR).

E. "Company," "Corporation," and "Entity" include any corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute or other business or legal entity, and includes any affiliate, parent or subsidiary.

F. "Relating to" means constituting, analyzing, describing, discussing, reporting on, commenting on, inquiring about, setting forth, explaining, considering, pertaining to, mentioning, regarding, alluding to or concerning, in whole or in part.

G. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa.

H. "The Chemours Company – Fayetteville Works" or "Chemours" as used herein includes any parent, subsidiary, predecessor, or successor to The Chemours Company, including but not limited to: E.I. Dupont de Nemours & Co. d/b/a DuPont – Fayetteville Works.

I. "Plant" as used herein means the fluorinated chemical manufacturer(s) situated on a 2,200-acre property in northwestern Bladen County, NC, at 22828 NC Highway 87 W, Fayetteville, NC 28306. Plant includes two tenant companies: Kuraray America Inc. and the DuPont Company. Plant operates under NPDES permit No. NC0003573 and North Carolina Title V Permit No. 03735.

J. "On-site WWTP" as used herein means Chemours' owned and operated wastewater treatment plant located at 22828 NC Highway 87 W, Fayetteville, NC 28306, that receives Chemours, Kuraray America Inc., and/or the DuPont Company process wastewater, sanitary wastewater, and/or contact stormwater, and then discharges the treated wastewater through outfall 001 under NPDES permit No. NC0003573.

K. "GenX" as used herein means the processing aid used by Chemours for the commercial manufacture, process, and distribution of the polymerization aid, and any and all variations of the compound. GenX also includes all GenX byproducts and wastewater generated, stored, treated, transported, and disposed of by the Plant (air and aqueous waste streams). Production as a product, byproduct, or waste has no bearing on whether material is GenX for purposes of this subpoena.

L. "Fluorinated chemical" as used herein means any poly- or per-fluorinated substances generated, purchased, or produced as byproduct by Chemours or Dupont, to include Hexafluoropropylene oxide (HFPO), the dimer acid of HFPO, Nafion, and any other fluorinated monomers or long- or short-chain fluorinated polymers.

### III. DOCUMENTS TO BE PRODUCED

Unless specifically mentioned, all records and documents are sought for each of the following facilities: **The Chemours Company – Fayetteville Works and/or E.I. Dupont de Nemours & Co. d/b/a DuPont – Fayetteville Works**, located at 22828 NC Highway 87 W, Fayetteville, NC 28306.

**Unless otherwise stated, produce the following documents for the time-period beginning on January 1, 2011 and through the present:**

1. Certified copies of all National Pollutant Discharge Elimination System Permits (NPDES) issued to the facility listed above since 2008 and the most current NPDES permits governing each facility's discharges.
2. Certified copies of all NPDES applications submitted by Chemours for NPDES

permits issued to the facility above since 2008 and for the current NPDES permit in place for the facility.

3. From June 1, 2017, to present, all documents that mention, directly or indirectly, anything involving the GenX Processing Aid and GenX or other fluorinated chemical byproducts, GenX or other fluorinated chemical wastewater discharges, Cape Fear River testing for GenX or other fluorinated chemicals, the 2009 EPA Toxic Substance Control Act ("TSCA") Consent Order for GenX, results of health studies related to GenX or other fluorinated chemicals, and all correspondence with Chemours, or local, county, or state regulatory agencies, including health departments and water treatment plants, referencing or relating to GenX or other fluorinated chemicals.
4. All documents relating to Dr. Detlef Knappe, Dr. Knappe's research and/or publications, or conversations and correspondence with Dr. Knappe. This request includes all correspondence between DEQ employees and Dr. Knappe.
5. All documents prepared or received in anticipation of any meeting between DEQ employees and Dr. Detlef Knappe.
6. All documents prepared or received during any meeting between DEQ employees and Dr. Detlef Knappe.
7. All documents prepared or received after any meeting between DEQ employees and Dr. Detlef Knappe, documenting any information or follow-up action items regarding the substance of such meeting.
8. All documents prepared or received in anticipation of the June 15, 2017, meeting between Chemours and state and local officials.
9. All documents prepared or received during the June 15, 2017, meeting between Chemours and state and local officials.
10. All documents prepared or received after the June 15, 2017, meeting between Chemours and state and local officials, documenting any information or follow-up action items regarding the substance of the June 15, 2017, meeting.
11. All documents exchanged between DEQ and The Chemours Company-Fayetteville Works, or its contractors or consultants, which mention, directly or indirectly, anything involving the GenX Processing Aid, GenX or other fluorinated chemical byproducts, GenX or other fluorinated chemical wastewater, or health studies relating to GenX or other fluorinated chemicals.
12. All documents related to negotiating, entering into, or compliance with the Control of Effluent & Emissions section of the United States Environmental Protection Agency Office of Pollution Prevention and Toxics Consent Order and

Determinations Supporting Consent Order issued In the Matter of DuPont Company dated January 28, 2009, to include any and all conversations relating to the applicability or non-applicability of the Clean Water Act to byproducts pursuant to item (I)(b)(3) of that Consent Order.

13. All documents related to WV/NPDES Permit No. WV0001279 or the West Virginia Department of Environmental Conservation Consent Order Issued Under the Water Pollution Control Act, dated November 18, 2011, between the West Virginia Department of Environmental Conservation and E.I. Dupont de Nemours and Company.
14. From January 1, 2011, all documents used to evaluate and approve the National Pollutant Discharge Elimination System (NPDES) Permit renewal applications (Permit No. NC0003573) submitted by Chemours and received by DEQ (this demand covers both the 2011 and 2016 NPDES permit renewal applications).
15. All documents purporting to authorize Chemours to discharge GenX, GenX byproducts, or other fluorinated chemicals into navigable waters of the United States.
16. All documents considered by DEQ to constitute disclosure by Chemours of the discharge of GenX, GenX byproducts, or other fluorinated chemicals into navigable waters of the United States.
17. All documents from Chemours Fluoromonomers/Nafion Membrane Manufacturing Area or Vinyl Ether area disclosing the discharge of GenX, GenX byproducts or other fluorinated chemicals to the on-site WWTP.
18. Any effluent sampling data of the wastewater discharged from Chemours Fluoromonomers/Nafion Membrane Manufacturing Area or Vinyl Ether area to the on-site WWTP.
19. All permitted effluent sampling results submitted by Chemours pursuant to its applicable NPDES permit since January 1, 2011, including daily and/or monthly monitoring reports.
20. All documents reflecting the amount of GenX Processing Aid, GenX byproducts, or other fluorinated chemicals converted to Calcium Fluoride (CAS Number 7789-75-5) or into hydrophobic water-insoluble hydride (CAS Number 3330-15-2).
21. All sampling results that tested for the presence or levels of GenX Processing Aid, GenX byproducts, or other fluorinated chemicals in air and aqueous forms. For aqueous samples this includes samples taken at the equalization basin, pre-digester tank, aeration tank, clarifiers, dissolved air-floatation unit, and NPDES outfalls 001 and 002.

22. All computer-modeling records of GenX or other fluorinated chemical removal from wastewater effluent.
23. All documents related to or schematics for the Chemours manufacturing lines/processes that manufactures the GenX Processing Aid or other fluorinated chemicals.
24. All documents related to the collection, storage, and off-site transportation and disposal of wastewater produced in the manufacturing of GenX Processing Aid or including GenX or other fluorinated chemicals as a byproduct.
25. All documents related to the manufacturing lines / processes that generate GenX or other fluorinated chemical byproducts (air and aqueous).
26. All documents involving the collection, storage, and flow volumes of wastewater containing GenX or other fluorinated chemical byproducts sent to the on-site WWTP for treatment and discharge.
27. All field notes, inspector notes, and/or photographs taken, made, and maintained in connection with any inspection of the Chemours facility and the discharge of wastewater containing GenX or other fluorinated chemical byproducts.
28. All groundwater and surface water monitoring data reflecting the presence of GenX Processing Aid, GenX byproducts, or other fluorinated chemicals.
29. All documents exchanged with the United States Environmental Protection Agency regarding the production or discharge of GenX Processing Aid, GenX byproducts, or other fluorinated chemicals from the Chemours – Fayetteville Works plant.
30. Certified copies of all documents relating to enforcement actions taken by any division of DEQ concerning the Chemours – Fayetteville Works plant, including but not limited to: notice of violations, administrative penalties, civil penalties, consent orders, complaints and motions for injunctive relief.
31. All documents, including sampling results, relating to samples taken from surface waters adjacent to the facility or from downstream drinking water plants in the past five years.
32. Any results of fish tissue monitoring, fish tissue sampling, or other data relating to the potential uptake of pollutants by fish, other wildlife, or plants submitted by Chemours pursuant to NPDES permits applicable to each facility.



U. S. Department of Justice

United States Attorney  
Eastern District of North Carolina

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310 New Bern Avenue  
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Raleigh, North Carolina 27601-1461

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July 28, 2017

NC DEPARTMENT OF ENVIRONMENTAL QUALITY ("DEQ")

Re: Grand Jury Subpoena No. 2017R00462-2

Dear Sir/Madam:

You may comply with the subpoena by personally appearing before the Grand Jury or furnishing copies (originals, if specified) of the requested materials to the undersigned Assistant United States Attorney prior to the grand jury date. If you choose to mail the documents, an instruction for mailing grand jury documents is attached.

We are also requesting that you complete the Business Record Affidavit pursuant to Rule 902(11) of the Federal Rules of Evidence, as amended December 1, 2000. By submitting this affidavit with the requested documents, you may avoid the need to appear at trial to testify to the authenticity of these records.

We appreciate your cooperation in this matter.

Sincerely,

JOHN STUART BRUCE  
United States Attorney

  
BANUMATHI RANGARAJAN  
Assistant United States Attorney  
Criminal Division

Enclosures

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF NORTH CAROLINA

IN RE:

Grand Jury Subpoena  
2017R00462-2

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**BUSINESS RECORD AFFIDAVIT**  
**FED. R. EVID 902(11)**

I am personally acquainted with the facts stated herein and make this statement under penalty of perjury.

I am the custodian of records for \_\_\_\_\_ (herein after referred to as "Company"). The documents made by the Company and produced in compliance with the subpoena duces tecum (consisting of \_\_\_\_\_ pages attached hereto) are memoranda, reports, records or data compilations of acts, events, conditions, opinions or diagnoses that were made at or near the time, by or from information transmitted by a person with knowledge and that have been kept in the course of the Company's regularly conducted business activity. It has been the Company's regular practice in that business activity to make those memoranda, reports, records or data compilations. Neither the source of information, nor the method or circumstances of preparation, indicate a lack of trustworthiness for those memoranda, reports, records or data compilations.

\_\_\_\_\_  
Affiant

Sworn to and subscribed before me  
this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_